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MAQSOOD AHMAD & ORS v. KETUA PEGAWAI PENGUATKUASA AGAMA & ORS

HIGH COURT MALAYA, SHAH ALAM
VAZEER ALAM MYDIN MEERA J
[JUDICIAL REVIEW NO: 25-56-10-2015]
25 OCTOBER 2021

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Abstract *– (i) Members of the Ahmadiyya sect are generally not Muslims and are not to be subjected to the dictates of Islamic law or statute, or any Syariah investigation or prosecution. However, to properly determine their constitutional and legal status, a differentiation must be made between those who were adherents of the faith by origin, and those who were professing the religion of Islam before embracing the doctrinal beliefs of the Ahmadiyya sect. The Civil Court is seized with jurisdiction to deal with those in the first category but not in the second; for the latter category, the right to determine belongs exclusively to the Syariah Court. (ii) The Ahmadiyya worshippers in this judicial review application are made up of those who were born into Ahmadiyya families and were Ahmadiyya adherents by origin, and Muslims who had subsequently come to adopt the Ahmadiyya faith. Clearly, the applicants in the second category who are Malaysians fall squarely within the 'renunciation' cases and would therefore come within the jurisdiction of the Islamic Authorities respondents, and be subject to the two fatwas herein, until and unless they obtain an order from the Syariah Court that they are followers of the Ahmadiyya sect.*

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ADMINISTRATIVE LAW: *Judicial review – Judicial review against decision of public authority – Jurisdiction – Officers of Jabatan Agama Islam Selangor ('JAIS') raided premises used by Ahmadiyya Muslim Jama'at religious group to perform prayers – Applicants compelled to appear before Syariah Court on pain of monetary penalty – Whether applicants Ahmadiyya faith by origin or subsequent adherents – Whether applicants Muslims under law - Whether applicants fell within jurisdiction of JAIS – Administration of the Religion of Islam (State of Selangor) Enactment 2003, s. 97*

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The officers of the Jabatan Agama Islam Selangor (JAIS) had raided the premises used by the applicants, members of the Ahmadiyya Muslim Jama'at religious group, to perform their prayers. Out of the 39 applicants, 28 were Malaysians, eight were Pakistanis, two were Indians and one was Indonesian. The applicants were (i) informed that they had not obtained written permission to use the premises for purposes which may only be carried on, in or by a mosque, contrary to s. 97 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ('Enactment'); (ii) arrested, detained and threatened with prosecution in the Syariah Court;

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and (iii) issued with letters of agreement and bond by the Chief Religious Enforcement Officer ('second respondent'), compelling them to appear before the Syariah Court on pain of monetary penalty ('decision of second respondent'). Hence, the present application for judicial review by the applicants against the decision of the second respondent. The questions that arose for ascertainment were (i) whether the applicants were Ahmadiyya faith by origin, such as birth, or were subsequent adherents of the faith having left mainstream Islam as practices in Malaysia; and (ii) whether the applicants were Muslims under the law, particularly for the purposes of any offence under the Enactment and the Syariah Courts (Criminal Jurisdiction) Act 1965.

Held (order accordingly):

(1) The applicants could be divided into two categories, namely: (i) those who were born Ahmadis ('first category'); and (ii) those who later in life became Ahmadis ('second category'). The second category may be divided into several sub-categories, namely (a) Malaysians; (b) foreigners who were legally residing in Malaysia; and (c) foreigners who were refugees. Except for the fifth, tenth and 27th to 36th applicants, who belonged to the second category, the other applicants belonged to the first category and had been followers of the Ahmadiyya sect since birth; they were Ahmadis by original faith and not persons professing to the religion of Islam. Therefore, the question of them renouncing Islam did not arise. The first to 26th and 37th to 39th applicants have established their case for judicial review and the decision and action of the respondents against them were in excess of jurisdiction; these applicants were entitled to the reliefs prayed for. (paras 22, 24 & 38)

(2) The applicants in the second category, who were not born into Ahmadi families, had come to adopt the Ahmadiyya faith in the later part of their lives and had been adherents for a considerable period of time. The Malaysian applicants in the second category, namely the 27th to 36th applicants, fell squarely within the renunciation cases *ie*, 'one who no longer professes the religion of Islam'. They would still come within the jurisdiction of the respondents, until and unless they obtain an order from the Syariah Court to the effect that they were followers of the Ahmadi sect and/or were persons affected by the relevant *fatwas* and/or were no longer persons professing the religion of Islam. (paras 31, 33 & 34)

(3) It did not make sense for the non-Malaysian applicants in the second category, namely the fifth and tenth applicants, to get an order from the Syariah Court before joining the local Ahmadi congregation in their prayers and religious practices. It was not even certain if the non-Malaysian applicants in the second category were professing the religion of Islam, as defined in Malaysian statutes, before they embraced the

teachings of the Ahmadi sect in their country of origin or some other place beyond Malaysian shores. A more reasonable legal construct would be for their religious belief to be determined as at the time of their entry into Malaysia. A foreigner professing to be an Ahmadi should not be required to first get an order from the Syariah Court. It would be sufficient to classify the non-Malaysian applicants in the second category as members of the Ahmadi community by origin and they would thus be beyond the reach of the respondent's jurisdiction. (paras 35 & 36)

Case(s) referred to:

Maqsood Ahmad & Ors v. Ketua Pegawai Penguatkuasa Agama Selangor & Ors [2019] 8 CLJ 96 HC ***(refd)***

MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC) ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(refd)***

WA (Pakistan) v. The Secretary of State for the Home Department [2019] EWCA Civ 302 ***(refd)***

Legislation referred to:

Administration of the Religion of Islam (State of Selangor) Enactment 2003, ss. 49, 97(2)

Courts of Judicature Act 1964, s. 84

For the applicants - Aston Paiva & Michael Cheah Ern Tien; M/s Amerbon

For the 1st & 4th respondents - Hasnan Hamzah & Qushwa Hasnan; M/s Hasnan Hamzah

For the 2nd, 3rd & 5th respondents - Muhammad Haziq Hashim; SLA, Selangor

Reported by Najib Tamby

JUDGMENT

Vazeer Alam Mydin Meera J:

[1] This is an application for judicial review by the applicants against the decision of the Ketua Pegawai Penguatkuasa Agama, ie, the Chief Religious Enforcement Officer of Selangor (the second respondent) to issue letters of agreement and bond against each of them; compelling them to appear before the Syariah Court on pain of monetary penalty for proceedings in respect of an offence under s. 97(2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("ARIE"); instituted by the Ketua Pendakwa Syarie, ie, the Chief Syarie Prosecutor of Selangor (the fifth respondent).

[2] By way of background, the following facts are relevant. On Friday the 11 April 2014 at around 2pm, officers of the Jabatan Agama Islam Selangor ("JAIS"), ie, the fourth respondents, raided premises at No. 16-2, Dolomite Park Avenue, Jalan Batu Caves, 68100 Selangor ("the premises") which was being privately used by the applicants to perform their prayers. The raiding officers were informed that all those present at the premises were members of the Ahmadiyya Muslim Jama'at religious group (translated in English as the Ahmadiyya Muslim Community) ("the Jama'at").

[3] Following the raid on the premises:

(i) The applicants were informed that they had not obtained written permission to use the premises for purposes which may only be carried on, in or by a mosque, contrary to s. 97 of the ARIE.

(ii) All 39 applicants, comprising 36 adult members of the Jama'at and three of their children, who were present at the premises, were arrested, detained and threatened with prosecution in the Syariah Court.

(iii) The applicants were then all issued with letters of agreement and bond ("the bond") by the second respondent, the Chief Religious Enforcement Officer, which compels them to appear before the Syariah Court on pain of monetary penalty.

[4] On 10 July 2014, the applicants filed an application for leave to commence judicial review in respect of issuance of the letters of agreement and bond ("bond") to each of them. On 14 August 2014, leave was granted by the High Court in Malaya at Kuala Lumpur. On 15 September 2015, the judicial review proceedings were transferred to the High Court in Malaya at Shah Alam. On 5 February 2016, a stay of proceedings was granted in relation to the bond till the determination of the judicial review.

[5] On 29 September 2017 pursuant to s. 84 of the Courts of Judicature Act 1964, the High Court at Shah Alam stayed the applicants' judicial review proceedings, and stated a special case with two constitutional questions and transmitted the same to the Federal Court for its decision.

[6] These two constitutional questions were:

> 1. In light of Item 9 (read together with the sub-matter "mosques or any Islamic public places of worship" in Item 1) of the State List in the Federal Constitution and section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965, whether the Syariah courts in the State of Selangor do not have jurisdiction in respect of the offence in section 97(2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.
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> 2. If the above is answered in the negative: In light of 'Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil. 51, No. 20, Sel. P.U. 15 on 24-9-1998, 'Pindaan Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil 53, No. 17, Sel. P.U. 36 on 17-8-2000 and article 11 (read together with Item 1 of the State List) of the Federal Constitution, whether the Syariah courts in the State of Selangor do not have jurisdiction over members of the Ahmadiyya Muslim Jama'at religious group (translated in English as the 'Ahmadiyya Muslim Community') including the Applicants.

The said questions in effect concern the jurisdiction of the Syariah Courts in respect of "offences" as regards to "mosques or any Islamic public places of worship", and the Syariah Court's jurisdiction over members of the Ahmadiyya Muslim Jama'at religious group, ie, the Jama'at.

[7] However, on 26 March 2018, the Federal Court remitted the said constitutional reference to the High Court without answering the questions on the basis that the High Court has jurisdiction to hear and dispose of these constitutional issues.

[8] Learned counsel on both sides of the divide were of the common view that the answers to these two constitutional questions would in effect dispose of this judicial review application wherein the applicants were seeking the following substantive remedy:

(a) Deklarasi bahawa menurut seksyen 49 Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 dibaca dengan 'Penetapan di bawah seksyen 41 Enakmen Pentadbiran Hukum Syarak bagi Negeri Selangor' bertarikh 11.4.1977 [JPM (U) W.P. 0172/6/1; PN. (PU) 197] yang diwartakan sebagai P.U. (B) 279 dan 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22.6.1998 [JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2] yang diwartakan sebagai Sel. P.U. 15 pada 24.9.1998 (Jil. 51. No. 20. Tambahan No. 6), Responden-Responden tidak mempunyai bidang kuasa untuk menyiasat dan/atau mendakwa Pemohon-Pemohon atau setiap satu daripada mereka.

(b) Deklarasi bahawa tindakan dan/atau keputusan Responden-Responden dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya untuk menyiasat dan/atau mencadangkan pendakwaan dan/atau mendakwa Pemohon-Pemohon atau setiap satu daripada mereka adalah bercanggah dengan hak-hak Pemohon-Pemohon di bawah Fasal-Fasal 5 dan/atau 11 dan/atau Item 1, Senarai II, Jadual Ke-9 Perlembagaan Persekutuan dan/atau seksyen 49 Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003.

(c) Perintah bersifat pembatalan (*certiorari*) keputusan Responden-Responden dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya untuk menjalankan penyiasatan atau meneruskan penyiasatan dan/atau meneruskan pendakwaan yang dicadangkan terhadap dan/atau mendakwa Pemohon-Pemohon atau setiap satu daripada mereka.

(d) Perintah bersifat pembatalan (*certiorari*) keputusan Responden-Responden Ke-2, Ke-3 dan Ke-4 untuk mengeluarkan 'Surat Perjanjian dan Jaminan kepada Ketua Pegawai Penguatkuasaan Agama' masing-masing bertarikh 11.4.2014 kepada Pemohon-Pemohon Ke-11; 14.4.2014 kepada Pemohon-Pemohon Ke-33; 15.4.2014 kepada Pemohon-Pemohon Ke-2, 3, 4, 7, 9, 14, 19, 20, 35 dan 39; 16.4.2014 kepada Pemohon-Pemohon Ke-10, 15, 18, 21, 22, 23, 25, 26, 27, 29, 34, 36 dan 38; dan 17.4.2014 kepada Pemohon-Pemohon Ke-5, 6, 8, 12, 13, 16, 17, 24, 28, 30, 31, 32, dan 37.

(e) Perintah bersifat *mandamus* terhadap Responden-Responden untuk melaksanakan penetapan di bawah seksyen 41 Enakmen Pentadbiran Hukum Syarak bagi Negeri Selangor bertarikh 11.4.1977

[JPM (U) W.P. 0172/6/1; PN. (PU) 197] yang diwartakan sebagai P.U. (B) 279 dan 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22.6.1998 [JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2] yang diwartakan sebagai Sel. P.U. 15 pada 24.9.1998 (Jil. 51. No. 20. Tambahan No. 6), terhadap penyiasatan dan/atau pendakwaan atau pendakwaan yang dicadangkan ke atas kes-kes Pemohon-Pemohon dan selanjutnya untuk membatalkan dan/atau mengugurkan penyiasatan dan/atau pendakwaan atau pendakwaan yang dicadangkan tersebut.

(f) Perintah bersifat larangan (prohibition) terhadap Responden-Responden Ke-2, Ke-3 dan Ke-4 dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya daripada menjalankan penyiasatan atau meneruskan penyiasatan terhadap Pemohon-Pemohon atau setiap satu daripada mereka.

(g) Secara alternatif perintah bersifat larangan (prohibition) terhadap Responden-Responden Ke-2, Ke-3 dan Ke-4 dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya daripada menjalankan penyiasatan atau meneruskan penyiasatan dan/atau meneruskan terhadap Pemohon-Pemohon atau setiap satu daripada mereka sekiranya Pemohon-Pemohon atau setiap satu daripada mereka mengemukakan bukti atau keterangan kepada Responden-Responden Ke-2, Ke-3 dan Ke-4 bahawa mereka adalah pengikut-pengikut ajaran Ahmadiah/Qadiani.

(h) Perintah bersifat larangan (prohibition) terhadap Responden-Responden Ke-2, Ke-3 dan Ke-4 dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya daripada mengambil langkah-langkah untuk mendakwa dan/atau meneruskan pendakwaan yang dicadangkan terhadap Pemohon-Pemohon atau setiap satu daripada mereka.

(i) Deklarasi bahawa kesemua orang (sama ada warganegara atau bukan warganegara Malaysia) yang mengakui (professing) kepercayaan-kepercayaan dan doktrin-doktrin Jemaat Ahmadiyah Muslim atau Ahmadiyya Muslim Community adalah berhak untuk mengakui dan mengamalkan (profess and practise) agama mereka di negeri Selangor, dan kesemua undang-undang yang dibuat menurut Jadual Ke-9 Senarai II Item 1 Perlembagaan Persekutuan di negeri Selangor tidak terpakai dan tidak mempunyai kesan ke atas orang-orang yang seumpama.

[9] I heard the application for judicial review and also considered the two constitutional questions raised and decided in favour of the applicants, and granted orders in terms of the prayers in the application. The respondents appealed that decision.

[10] The Court of Appeal allowed the appeal in part and remitted the matter to the High Court for me to reconsider the status of all the applicants as Ahmadis, and ascertain whether they were Ahmadis by original faith or whether there are amongst them those who had renounced Islam to adopt the Ahmadiyya faith.

[11] Thus, I was directed by the Court of Appeal to undertake a factual examination of the religious status of the applicants, in order to determine if they would be persons caught by the two *fatwas*, namely, 'Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil. 51, No. 20, Sel. P.U. 15 on 24 September 1998, and 'Pindaan Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil 53, No. 17, Sel. P.U. 36 on 17 August 2000 ("the two *fatwas*").

[12] In so ordering, the Court of Appeal made the following observation in its judgment:

> [183] We have already noted that *the learned judge did not undertake an evidential analysis to determine whether the respondents or any one of them is either an Ahmadi by original belief or an Ahmadi by reason of his or her renunciation of the religion of Islam. Naturally, as the point was not canvassed in the court below, neither the appellants nor the respondents made any submissions as to the factual status of any of the respondents in the High Court.*
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> [184] Before us, the issue was one of law, that is, whether the fact that some of the respondents' MyKads label them as 'Islam' has any legal effect on their religious status. *What is clear is that it does not but nonetheless, as the judgments by our courts have made clear, such as that in Kamariah Ali (supra), whether the respondents or any one of them is actually an Ahmadi by birth or by renunciation of the Islamic faith, poses a real issue.* (emphasis added)

[13] The reason for that direction by the Court of Appeal is found in paras. 190 to 192 of the court's judgment:

> [190] In respect of Appeal 468, premised on prayer (g) of the respondents' 'application for judicial review, the respondents' case at it is themselves are willing to accept that the relief may be contingent upon them adducing proof that they are followers of the Ahmadiyya faith. Accordingly, for the reasons already indicated, we allow Appeal 468 in part and the order of the High Court in Appeal 468 is hereby set aside.
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> [191] We accordingly remit the matter of Appeal 468 to the High Court to allow parties to make further submissions on the evidence already on record in accordance with prayer (g) of the respondents' application for judicial review. For expediency, we hereby direct that the matter be fixed for case management at the High Court of Shah Alam forthwith.
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> [192] For the avoidance of doubt, *should the respondents or any of them make their case by cogent and credible supporting evidence that they are Ahmadiyya, then the High Court has the discretion to grant them the reliefs they seek to quash and prohibit all Syariah investigation and prosecution against them or further relief relevant to the successful enforcement of that order.* (emphasis added)

[14] Now, as to the nature of prayer (g) in the applicant's judicial review application alluded to by the Court of Appeal and what it entailed, the Court of Appeal had this to say:

> [158] We also note that one of the prayers of the respondents sought in their application for judicial review is prayer (g) which we reproduced as follows:
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> > (g) In the alternative, an order in the nature of prohibition against the 1st, 2nd and 3rd Appellants and their servants, officers and/or agents from conducting investigations or continuing investigations against the Respondents or each of them *if the Respondents or each of them procures proof or evidence to the 1st, 2nd and 4th Appellants that they are followers of the teachings of the Ahmadiah/Qadiani.*
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> [159] Premised on the above prayer, the respondents themselves had indicated their amenability to be subjected to an investigatory process to prove that they are indeed Ahmadiyya. *Thus, in our considered view, the learned judge should have allowed an investigation into the respondents' religious status. With respect, in our view, the learned judge erred in finding the Religious Enforcement Officers had exceeded their jurisdiction simply on the assumption that all the respondents are indeed Ahmadi without making the distinction as to whether they are of the Ahmadiyyah faith by origin or by conversion from Islam.*
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> (emphasis added)

[15] In this regard, the Court of Appeal added:

> [171] For the foregoing reasons, we are of the considered view that the burden to establish that the respondents herein are indeed Ahmadiyya lies on them because their faith is a fact especially within their knowledge.
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> [172] We pause for a moment to note that this 'peculiarity', arises specifically in this case because the Ahmadiyyah consider themselves as Muslims though the law of Selangor says they are not. *The difficulty, is that we do not know, on the facts of this case whether the respondents are Ahmadi by original faith or whether there are among them any one who had renounced Islam to adopt the Ahmadi faith.* If say a Christian or a Hindu were to convert to become an Ahmadi, it would unlikely be an issue whether he had renounced his Christian or Hindu faith before he adopted the Ahmadi faith subsequently. *This is why a factual examination of the religious status of the respondents, which the learned judge failed to undertake, is necessary.*
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> [178] Thus, given the systemic issues in our Federal Constitution, we think the approach taken by the court below was, with respect, incorrect. The learned judge presumed that the respondents in the present case are indeed, Ahmadiyya without due regard to the averments by the relevant officer of the third appellant that the appellants are unable to conclude that the respondents are of the Ahmadiyya community. *Without such a*

factual determination, the court would be unable to determine whether the applicant is a genuine Ahmadiyya or an apostate. This distinction is important because the courts must rule in accordance with the law which includes the Federal Constitution and the ARIE 2003. (emphasis added)

[16] Hence, the importance of the determination as to whether the person is professing the religion of Islam is underscored by the legal implications that flow from that characterisation. The underlying legal rationale for that direction by the Court of Appeal can be gleaned from the following passage in the judgment of Badariah Sahamid JCA speaking for the court:

[119] Given the strict technicalities of the law on this sensitive subject, we seek to avoid any potential doubt or confusion. At this juncture, we seek to make the following points clear:

(i) The freedom of religion is an absolute and non-derogable right save for the express limitations that the Federal Constitution itself allows. This for one is art. 11(4) on the prohibition of proselytisation of any religion other than Islam to those professing the religion of Islam and the strict restriction being the one stipulated in art. 11(5).

(ii) The freedom of religion applicable to non-Muslims does not apply with equal force to Muslims. *This is because being a Muslim confers one a legal status and changes the entire regime of personal law applicable to them. It also allows the State to enact offences specifically catered to Muslims under item 1 of List II of the Ninth Schedule.* This is supported by the difference in language in item 1 which is relatively more narrowly worded to include all those 'professing' the religion of Islam whereas art. 11(1) uses the more liberal phrase ‘profess and practise’.

(iii) Therefore, the term Islam for all intents and purposes in as much as it is a religious belief, is also a legal label demarcating between those who can and cannot seek recourse in and be tried (as the case may be) before the Syariah Courts. *Section 74(2) of the ARIE 2003 and all related legislation of other States exist to presume that a person originally a Muslim is presumed to be a Muslim until and unless he seeks an order of the Syariah Court stating otherwise.*

(iv) *If a person is born and raised as a Muslim (whether he chooses to practise his beliefs or not), he is in law a person ‘professing the religion of Islam’. Should he change his religion from Islam to Ahmadiyya, just as if he were to attempt to renounce Islam for any other faith, he cannot do so unless by order of the Syariah Court as prescribed by the relevant State law. Thus, any renunciation of the Islamic faith is within the jurisdiction of the Syariah Courts.*

(v) *The legal label of being a Muslim also has other legal effects. For one, it determines whether one is constitutionally a Malay or not and a fortiori whether such a person is entitled to the special position under art. 153 of the Federal Constitution. This point is also made in the 2000 fatwa specifically in respect of the Ahmadiyya community.*

(vi) The 1998 and 2000 *fatwas* essentially removed the legal status of the Ahmadiyya community as persons 'professing the religion of Islam'. Having lost that label, they cannot therefore be taken as persons or a class of persons being subject to the exclusive jurisdiction of the Syariah Courts prescribed in item 1, List II of the Ninth Schedule of the Federal Constitution. (emphasis added)

[17] Hence, the present exercise is limited to the factual ascertainment of whether the applicants were of the Ahmadiyya faith by origin, such as birth, or were subsequent adherents of the faith having left mainstream Islam as practiced in Malaysia. This court is seized with jurisdiction to determine those in the first category, whilst if they are adherents of the Ahmadiyya faith having originally been persons who professed the religion of Islam as defined in the relevant statute, then the determination of that status belongs exclusively to the Syariah Courts. This jurisdictional dichotomy was reiterated by the Federal Court in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301; [2021] 2 MLJ 181, where court stated that there is:

... a significant distinction between 'one who no longer professes the religion of Islam' and 'one who never professes the religion of Islam'. The former refers to renunciation cases which therefore fall within the jurisdiction of the Syariah Courts, whilst the latter, described as *ab initio* cases, fall within the jurisdiction of the Civil Courts. The Civil Courts would have jurisdiction over the *ab initio* cases as the issue is not one of faith but of one's identity under the FC.

[18] Hence, if the applicants, or any one of them, can establish by cogent evidence that he or she did not profess the religion of Islam at the time of arrest, which includes Ahmadis by virtue of the two *fatwas*, then the civil courts, including this High Court, would have jurisdiction to make that determination and declare them to be so. Such applicants would for the purposes of the present exercise include those who were Ahmadis by birth. However, if any of the applicants, were not Ahmadis by birth, and were persons professing the religion of Islam before embracing the tenets and doctrinal beliefs of the Ahmadiyya sect, then such persons would be deemed to no longer profess the religion of Islam, and would come under the category of renunciation cases, which would be within the jurisdiction of the Syariah Courts to make that determination.

[19] It must be noted that of the 39 applicants herein, 28 are Malaysians (two of whom are minors), eight are Pakistanis (one of whom is a minor), two are Indians and one Indonesian. The evidence in relation to each of the applicant is voluminous as lengthy affidavits have been filed by them asserting their status as members of the Ahmadiyya faith. On the other hand, the affidavit of Nurhelmi bin Ikhsan, filed on behalf of the respondents, doubts the Ahmadi status of the applicants. Parties submitted at length on the issue.

[20] Now, to determine this issue, I have taken guidance from the pronouncement of the English Court of Appeal in *WA (Pakistan) v. The Secretary of State for the Home Department* [2019] EWCA Civ 302 ("*WA (Pakistan)*"), that was referred to by the Court of Appeal in their judgment in the instant case. The *WA (Pakistan)* case referred to another case, that is, *MN and others (Ahmadis – country conditions – risk) Pakistan CG* [2012] UKUT 00389 (IAC), where at headnote (5) it was stated as follows:

> In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.

[21] These English cases dealt with the determination of one's religious faith for the purposes of deciding on an asylum seekers' application to be allowed into and reside in the United Kingdom. The English Court of Appeal had enjoined the tribunal of fact to reach conclusions based on the evidence as a whole, giving such weight to aspects of that evidence as appropriate, and in particular taking into consideration whether the applicant was registered with an Ahmadi community within locality and worshipped and engaged there on a regular basis. Confirmation of that fact from the local community where the applicant is congregating for worship would be a relevant consideration.

[22] Having considered the submissions and the supporting evidence in the voluminous affidavits, I find that the applicants can generally be divided into two categories, namely, those who were born Ahmadis ("first category"), and those who later in life became Ahmadis ("second category").

[23] The applicants in the second category in turn may be divided into several sub-categories, namely:

(i) Malaysians;

(ii) foreigners, who are legally residing in Malaysia; and

(iii) foreigners, who are refugees recognised by the UNHCR.

[24] The uncontroverted evidence shows that except for applicants no. 5, 10 and 27 to 36, who became members of the Ahmadiyya sect sometime during their lifetime (second category), the rest of the applicants were born to Ahmadi parents (first category). Hence, applicants no. 1 to 4, 6 to 9, 11

to 26 and 37 to 39, who are in the first category had been followers of the Ahmadiyya sect since birth. Thus, they are Ahmadis by original faith and not persons professing the religion of Islam. Thus, the question of them renouncing Islam does not arise. They would for reasons given in my earlier judgment, be beyond the reach of the respondents' jurisdiction.

[25] There is overwhelming evidence showing that applicants no. 1 to 4, 6 to 9, 11 to 26 and 37 to 39, are part of the Ahmadiyya community in Malaysia. I have delved in some detail on the historical presence of the Ahmadiyya community in Malaysia. This is summarised in para. [76] of my earlier judgment that is reported as *Maqsood Ahmad & Ors v. Ketua Pegawai Penguatkuasa Agama Selangor & Ors* [2019] 8 CLJ 96:

> [76] The existence of the Ahmadiyya community in Selangor, since at least from the 1950s, is a fact that was well known to the Selangor State Religious Authorities. The Ahmadis were declared as non-Muslims after a hearing before HRH The Sultan of Selangor in 1953. Thereafter, separate burial grounds for Ahmadis were reserved on State land by the Selangor State Government. Then, sometime in 1963, the Ahmadiyya community were moved from Kampung Baru in Kuala Lumpur and resettled in Kampung Nakhoda, Batu Caves, on several plots of land given to the community by the Malaysian Government, by the good office of the then Prime Minister Tunku Abdul Rahman. Thereafter, the two *fatwas*, namely, 'Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil. 51, No. 20, Sel. P.U. 15 on 24 September 1998, and the 'Pindaan Fatwa Tentang Ajaran Ahmadiah/Qadiani' gazetted as Jil. 53, No. 17, Sel. P.U. 36 on 17 August 2000 were published declaring the members of the Jama'at as non-Muslims. The Selangor State Religious Authorities knew well of the Jama'at's religious activities at their base in Kampung Nakhoda and this is evidenced by the signboards erected around the *'Bait-us-Salam'* notifying the public that "Qadiani is not Islam" and also by the notice of prohibition issued by the MAIS in 2009 to the Jama'at to cease all prayer activities on the premises. The applicants were then forced to conduct their prayers at the rented premises. There is no evidence of the applicants being a nuisance or being a cause of concern in respect of public order and security. They were peacefully conducting their religious affairs.

[26] The Government of Malaysia had recognised the Ahmadiyya Jama'at as a distinct community and had given them land in Batu Caves for the purposes of their religious activities. These first category applicants regularly worshipped together with the larger Ahmadiyya community, particularly at their *'Bait-us-Salam'* base at Kampung Nakhoda, Batu Caves, where they have been carrying out their religious practices for some years, including congregational prayers within the compound. Jabatan Agama Islam Selangor, the fourth respondent, knew well of the activities of the Ahmadiyya Jama'at at *'Bait-us-Salam'*, and had erected or caused to be erected by the Majlis Perbandaran Selayang sometime in 2005 three

A signboards in front and to the side of *'Bait-us-Salam'*, identifying it as *'Bait-us-Salam'* and a further three signboards around Kampung Nakhoda, Batu Caves, with the words, "Qadiani Bukan Agama Islam" – a phrase meaning that the Ahmadiyya belief is not Islam. Hence, there is express recognition by the fourth respondent of the existence of the members of the Ahmadiyya
B Jama'at in Selangor, and that the Ahmadis practised their religious beliefs in peaceful congregation at the *'Bait-us-Salam'*. The fourth respondent clearly regarded the Ahmadis gathering for their religious practices at the *'Bait-us-Salam'* as persons not professing the religion of Islam.

[27] These applicants had congregated at *'Bait-us-Salam'* until April 2009,
C when they received a letter from Majlis Agama Islam Selangor ("MAIS") stating that the applicants could not use the *'Bait-us-Salam'* as a place of worship or to perform any prayers therein without prior written approval from MAIS.

[28] Not wanting any confrontation with the authorities, the Ahmadis
D stopped using the *'Bait-us-Salam'* as a place of worship and relocated themselves to the premises, solely for prayer and worship purposes. When the arrest of the applicants took place it was at this premises, which the respondents knew very well was the congregational place of worship for the Ahmadiyya community, after having forced their relocation from Kampung
E Nakhoda.

[29] On Friday 11 April 2014 at around 2pm, officers of the Jabatan Agama Islam Selangor ("JAIS"), ie, the fourth respondent, raided the premises, which was being privately used by the applicants to perform their congregational prayers. The raiding officers were informed that all those
F present at the premises were members of the Ahmadiyya Muslim Jama'at religious group. However, these protestations fell on deaf ears, and the raiding party proceeded to arrest all the applicants who were gathered at the premises.

[30] Hence, not only by birth, but also by their lifelong association with
G the Ahmadiyya Muslim Jama'at, the first category applicants, namely applicants no. 1 to 4, 6 to 9, 11 to 26 and 37 to 39 have clearly demonstrated to the satisfaction of this court that they are members of the Ahmadiyya Jama'at and that they are Ahmadis who would be deemed to be persons not professing Islam by virtue of the two *fatwas*.

H

[31] The second category applicants, that is applicants no. 5, 10 and 27 to 36, on the other hand, are those who were not born into Ahmadi families, but had subsequently come to adopt the Ahmadiyya faith. The evidence adduced shows that these second category applicants, who had adopted the
I Ahmadi faith in later part of their lives, had been adherents of the sect for a considerable period of time. Some are Malaysians, while some are

foreigners who are either legally in the country or as refugees. They regularly worshipped together with the Ahmadi community in Malaysia, particularly at the *'Bait-us-Salam'* base at Kampung Nakhoda, Batu Caves, where they have been carrying out their religious practices, including prayers within the compound, before relocating to the premises. The evidence, on a balance of probabilities, establishes the fact these second category applicants are also followers of the Ahmadiyya sect. However, whether that by itself is sufficient to establish in law that they are also persons affected by the two *fatwas*, and thus beyond the jurisdiction of the respondents is another matter.

[32] The subject matter of the present exercise is the determination of whether the applicants are or are not Muslims under the law, ie, particularly for the purposes of any offence under the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("ARIE") and the Syariah Courts (Criminal Jurisdiction) Act 1965.

[33] The applicants in the second category, who are Malaysians, and who were persons who professed the religion of Islam, and who had subsequently embraced the Ahmadiyya teachings will definitely fall within the renunciation cases, ie, 'one who no longer professes the religion of Islam'. Despite their adherence to the Ahmadiyya faith, the law deems such persons to be persons who profess the religion of Islam, until and unless they obtain an order of renunciation of Islam from the Syariah Courts. This is a necessary requirement of the law as expressed by the Federal Court in several judgments, the most recent of which was in *Rosliza*'s case (*supra*).

[34] Thus, the applicants in the second category who are Malaysians fall squarely within the renunciation cases, ie, 'one who no longer professes the religion of Islam'. They would still come within the jurisdiction of the respondents, until and unless they obtain on order from the Syariah Court to the effect that they are followers of the Ahmadi sect, and/or are persons affected by the two *fatwas*, and/or are no longer persons professing the religion of Islam. Those falling within this category would be applicants no. 27 to 36.

[35] Now whether, the non-Malaysians within the second category applicants are also required to obtain such an order from the Syariah Court is less clear. There are two such applicants, namely, applicants no. 5 and 10. Having given it some thought, I find that it does not make sense for a refugee or a foreigner who is on a transient journey through the country, to first get an order from the Syariah Court before he/she can join the local Ahmadi congregation in their prayers and religious practices. That's just impractical. In any event, it is not even certain if such persons were professing the religion of Islam, as defined in our statutes, before they embraced the teachings of the Ahmadi sect in their country of origin or some other place beyond our shores. In this regard, I had observed in my earlier judgment as follows:

A Should every foreigner who professes to be an Ahmadi be also required to make an application to the Syariah Court after he enters the country if he intends to participate in the religious rituals and prayers of the Jama'at. Surely not. When the religious authorities have by law excommunicated a sect from the State-recognised mainstream or dominant orthodox Islam, then by implication all members of that sect
B would not be members of the State-sanctioned mainstream orthodox Islam, ie, *Ahlul Sunnah Wa Jamaah*.

[36] As far as such persons are concerned, I am of view that a more reasonable legal construct would be for their religious belief to be determined as at the time of their entry into the country, just as we would for any person
C not professing the religion of Islam. Just as we do not require any non-Muslim entering the country to get proof of their status from the Syariah Court, we should not require a foreigner professing to be an Ahmadi to first get an order from the Syariah Court. When such a person upon entering the country declares himself to be an Ahmadi, and there is evidence in support
D of that, he would for all intents and purposes be Ahmadi by origin when entering the country. Such persons would, thus, come within the ambit of the two *fatwas*, and as such be regarded as persons not professing the religion of Islam when they entered the country. In the circumstance, it would be sufficient to classify them as members of the Ahmadi community by origin,
E and they would thus be beyond the reach of the respondent's jurisdiction.

[37] This court is seized with jurisdiction to make that determination according to the principles enunciated in *Rosliza*'s case, for when they first entered into Malaysian territory, and more specifically into Selangor, they were already persons who were not professing the religion of Islam by virtue
F of the two *fatwas*. To my mind, it does not matter whether such persons were Ahmadis by birth or whether they had subsequently embraced it, they are Ahmadi by origin when they entered the country. In the premise, there should not be any legal impediment for such persons joining the first category Ahmadiyya community in their religious practices, as applicants no. 5 and
G 10 were doing at the time of the raid and arrest.

[38] Having considered the evidence as a whole, I find that applicants no 1 to 26 and 37 to 39 have established their case for judicial review. The decision and action of the respondents against applicants no 1 to 26 and 37 to 39 are in excess of jurisdiction and these applicants are entitled to the
H reliefs prayed for. As for applicants no. 27 to 36, they are deemed to be persons professing the religion of Islam until and unless they obtain an order from the Syariah Court to the contrary. And until they do they would be within the jurisdiction of the respondents.

[39] Wherefore, I make the following orders:
I

(i) Deklarasi bahawa menurut s. 49 Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 dibaca dengan 'penetapan di bawah s. 41 Enakmen Pentadbiran Hukum Syarak 1952 bagi Negeri Selangor' bertarikh 11 April 1977 (JPM (U) W.P. 0172/6/1; PN. (PU) 197) yang diwartakan sebagai P.U. (B) 279 dan 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22 Jun 1998 (JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2) yang diwartakan sebagai Sel. P.U. 15 pada 24 September 1998 (Jil. 51, No. 20, Tambahan No. 6), Responden-responden tidak mempunyai bidang kuasa untuk menyiasat dan/atau mendakwa pemohon-pemohon No. 1 hingga 26 dan 37 hingga 39 atau setiap satu daripada mereka, manakala untuk pemohon-pemohon 27 hingga 36 deklarasi ini hanya terpakai sekiranya mereka memperolehi Perintah daripada Mahkamah Syariah bahawa mereka adalah pengikut ajaran Ahmadiah atau termasuk dalam 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22 Jun 1998 (JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2).

(ii) Deklarasi bahawa tindakan dan/atau keputusan responden-responden dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya untuk menyiasat dan/atau mencadangkan pendakwaan dan/atau mendakwa pemohon-pemohon No. 1 hingga 26 dan 37 hingga 39 atau setiap satu daripada mereka adalah bercanggah dengan hak-hak pemohon-pemohon No. 1 hingga 26 dan 37 hingga 39 di bawah fasal-fasal 5 dan/atau 8 dan/atau 11 dan/atau item 1, senarai II, Jadual Ke-9 Perlembagaan Persekutuan dan/atau s. 49 Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003, manakala untuk pemohon-pemohon 27 hingga 36 deklarasi ini hanya terpakai sekiranya mereka memperolehi Perintah daripada Mahkamah Syariah bahawa mereka adalah pengikut ajaran Ahmadiah atau termasuk dalam 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22 Jun 1998 (JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2).

(iii) Perintah bersifat pembatalan (*certiorari*) keputusan responden-responden dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya untuk menjalankan penyiasatan atau meneruskan penyiasatan dan/atau meneruskan pendakwaan yang dicadangkan terhadap dan/atau mendakwa pemohon-pemohon no. 1 hingga 26 dan 37 hingga 39 atau setiap satu daripada mereka.

(iv) Perintah bersifat pembatalan (*certiorari*) keputusan responden-responden ke-2, ke-3 dan ke-4 untuk mengeluarkan 'Surat Perjanjian dan Jaminan kepada Ketua Pegawai Pengkuatkuasaan Agama' masing-masing bertarikh 11 April 2014 kepada pemohon-pemohon ke-11; 15

April 2014 kepada pemohon-pemohon ke-2, 3, 4, 7, 9, 14, 19, 20, dan 39; 16 April 2014 kepada pemohon-pemohon ke-10, 15, 18, 21, 22, 23, 25, 26, dan 38; dan 17 April 2014 kepada pemohon-pemohon ke-5, 6, 8, 12, 13, 16, 17, 24, dan 37.

(v) Perintah bersifat *mandamus* terhadap responden-responden untuk melaksanakan penetapan di bawah s. 41 Enakmen Pentadbiran Hukum Syarak 1952 bagi Negeri Selangor bertarikh 11 April 1977 (JPM (U) W.P. 0172/6/1; PN. (PU) 197) yang diwartakan sebagai P.U. (B) 279 dan 'Fatwa tentang ajaran Ahmadiah/Qadiani di bawah Enakmen Pentadbiran Perundangan Islam 1989' bertarikh 22 Jun 1998 (JAI. Sel 8069/2: PU. Sel. AGM/0007 Jld 2) yang diwartakan sebagai Sel. P.U. 15 pada 24 September 1998 (Jil. 51, No. 20, Tambahan No. 6), terhadap penyiasatan dan/atau pendakwaan atau pendakwaan yang dicadangkan ke atas kes-kes pemohon-pemohon no. 1 hingga 26 dan 37 hingga 39 dan selanjutnya untuk membatalkan dan/atau mengugurkan penyiasatan dan/atau pendakwaan atau pendakwaan yang dicadangkan tersebut.

(vi) Perintah bersifat larangan (prohibition) terhadap responden-responden ke-2, ke-3 dan ke-4 dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya daripada menjalankan penyiasatan atau meneruskan penyiasatan terhadap pemohon-pemohon no. 1 hingga 26 dan 37 hingga 39 atau setiap satu daripada mereka.

(vii) Perintah bersifat larangan (prohibition) terhadap responden-responden ke-5 dan kakitangan-kakitangannya, pegawai-pegawainya dan/atau agen-agennya daripada mengambil langkah-langkah untuk mendakwa dan/atau meneruskan pendakwaan yang dicadangkan terhadap pemohon-pemohon no. 1 hingga 26 dan 37 hingga 39 atau setiap satu daripada mereka.

(viii) As this is a matter of public importance, there shall be no order of costs.